Me
Bitt

…MINOLOGY
…EW YEARBOOK

SAGE

CRIMINOLOGY REVIEW YEARBOOK

Volume 1

CRIMINOLOGY REVIEW YEARBOOK

Associate Editors

Volume 1

CRIMINOLOGY REVIEW YEARBOOK

Edited by
Sheldon L. Messinger
and
Egon Bittner

SAGE PUBLICATIONS Beverly Hills London

For information address:

SAGE PUBLICATIONS, INC.
275 South Beverly Drive
Beverly Hills, California 90212

SAGE PUBLICATIONS LTD
28 Banner Street
London EC1Y 8QE England

Printed in the United States of America

International Standard Book Number 0-8039-1062-2

International Standard Serial Number 0163-9056

FIRST PRINTING

CONTENTS

PREFACE

This is the first of a series of volumes designed to assist students of crime and crime control in staying abreast of their rapidly growing and changing field. We include among such students those interested in crime and crime control per se for intellectual or policy-related reasons, and those interested because the study of crime and crime control throws needed light on other phenomena of interest to them, such as social change and stability. These are not necessarily exclusive groups, of course. But to the extent that they are, we intend both to be served by this and succeeding volumes of the SAGE CRIMINOLOGY REVIEW YEARBOOK.

Each volume will contain specially prepared essays on emerging or controversial theories, perspectives, and issues in the study of crime and crime control; recently published materials dealing with these and additional themes; and a statistical appendix.

When we first discussed the series with the publisher, we thought the first volume might contain articles and book-segments of high quality published in the previous several years. We also wanted to be open to "fugitive" publications—those not reaching regular scholarly or commercial channels. Being aware that the study of crime and crime control was burgeoning, we believed that identifying, putting in one volume, and commenting on the "best" of this work would be useful. We did not expect that *selecting* materials of high quality would be a problem; we thought that *finding* them would be.

We were wrong. The flood of high quality materials that the recommendations of the associate editors, and our own reading, brought to attention was overwhelming. The large size of this volume reflects that fact. So, too, does the fact that most of the reprinted materials date from 1977 or 1978. Even so, we could not in one liftable or affordable volume contain all the high quality materials on crime and crime control printed (in regular channels, much less "fugitive" ones) in 1977 or 1978.

So we took another tack. Besides deciding to focus mainly on the most recent publications, we decided to "thematize" the volumes. Based on our reading, and conversations and correspondence with associate editors, we selected several themes and commissioned essays on them that would, in part, review the literature we could not reprint without devoting any given volume to a single theme. Selection of the three themes for the first volume was not difficult, although it was arbitrary to the extent that other, equally important themes might have been chosen. We are not troubled by this, caring less about what we have been unable to accomplish than the value of what has been done. We believe that any fair assessment of work on crime and crime control during the past few years would support our contention that, among the major developments to be considered, are the increasing attention of economists and historians to these phenomena, and the struggle, in theory and practice, to deal with "discretion." Other important paradigms, perspectives, and problems will be treated in later volumes.

To a lesser extent, however, some are treated in this volume too. In view of the complexity of the field, we decided not to limit any given volume to three themes, but to include materials on two or three more that seemed important, even though our resources would not permit commissioning essays on them. Thus, in this volume, we have included work on delinquency theory; organizational criminality; and prevention, treatment, and control. We have supplied some comments on these as well as the other themes in our introductory materials.

The statistical appendix is intended to enhance the use of each volume for reference purposes, as well as to provide some quantitative information to illustrate matters discussed in the preceding materials.

Decisions about the commissioning of essays and the statistical appendix and about the inclusion of papers were made, in the end, by the editors, and we accept full responsibility for them. We were ably assisted in coming to these decisions by the associate editors, and thank them warmly. We also want to thank Isaac Ehrlich, Michael S. Hindus, Arthur Rosett, Joseph G. Weis, and James Henney for preparing original materials for this volume; Lee S. Friedman, for permitting us to print this "fugitive" article on multiple regression analysis; and the many authors and publishers who gave us permission to reprint the many works included. We greatly profited from the assistance of Nancy Cushing Jones, of Sage Publications, Inc., and thank her too. Last but not least, Jean Collard gave able typing assistance: thanks.

INTRODUCTION

Many students of crime and crime control feel that their subject is no longer adequately described and analyzed in received terms. An era stretching back at least to the early part of this century appears to be passing away; a new era, requiring a changed vision, appears to be emerging. Whether the events engendering this feeling truly constitute or portend a new era, it is probably too early to say. It is not too early to suggest what some of these events have been.

I

The so-called "lawless years" of the Prohibition Era and the years of the Eisenhower presidency could be compared in all their important aspects on a number of dimensions. One can, of course, place the present and very recent past on this continuum, comparing rates of criminality, changes in the size of prison populations, variations in the number of executions, and the dollar losses due to crime. But none of these comparisons would reveal the critically new in the just past years.

None, for example, would show that in our times crime has been lifted from its traditional place in the scheme of things and shifted into the center of public attention as a political issue of first importance. The rise in the national significance of crime manifests itself in many ways, conspicuous being how references to rising crime rates and risks of criminal victimization have become an almost habitual part of public discourse in all parts of the country and in all segments of life. Polls, newspapers, and campaign oratory assure us that "the people" place "the crime problem" very high on the inventory of what is wrong with the country. Further, while this apprehension centers on what the F.B.I. inventories as "index crimes," it goes beyond them, and includes the perception of certain aspects of national politics as crime—especially, but not exclusively, expressions of popular protest.

It is not our view that these phenomena are unique in American history. Instead, we propose that the period between the mid-1960s and the mid-1970s was characterized by a public perception according to which the country was beset by a vast and growing outbreak of lawlessness in both the private and public spheres, and that the meaning of crime during this period must be understood in relationship to the elevation of crime to a matter of national importance and the criminalization of nation-wide political protest.

A refracted version of this perception characterizes criminological scholarship as well, and helps account for the decided sense that a new vision is needed. This new vision, hard in coming, is meant to apply to more than the present and future; it is meant to apply to the past as well. If crime has only recently become a subject for national political debate, the debate itself seems to have suggested that it may always have been a more important matter than commonly appreciated—or than realized by scholars. If political dissent has been criminalized, perhaps this, too, was true but insufficiently appreciated in the past.

II

Republican candidates in 1964 attacked the Democratic administration for taking—or at least abetting—a "soft attitude" toward crime and criminals. More specific targets of attack included the Supreme Court for shifting the balance of procedural advantage in the criminal process to defendants; trial judges for releasing convicted offenders faster than they could be arrested; and the correctional establishment for pursuing the elusive aim of rehabilitation of convicts. More generally, representatives of conventional liberalism were scored for attempting to give the underdog the jump in a dog-eat-dog world. Into this world conservatives sought to introduce, or reintroduce as they maintained, the principle of unaided competition. Liberal welfare programs aimed at abolishing conditions within which crime is known to thrive to get at the "roots of the crime problem" were held by conservatives to encourage the very predatory outlook underlying criminality. In a world of "no free lunches," the people who paid for theirs—even if aided by IRS subsidies—were certain that telling the sturdy rogue that he was the victim of past injustices virtually gave him a claim on something for nothing.

The Republican attack on liberal attitudes toward crime and on the programs designed to deal with it were reminiscent of accusations of being "soft on communism" in the heydays of the Cold War. We think this is no accident: criminals, overrepresented by members of minority groups unsatisfied with the status quo, bid fair to become an enemy within; proper subjects for a not-so-cold-war.

Conservatives were not the only persons crediting official misfeasance and official nonfeasance for crime. A related view was gaining strength on the liberal side. The old liberal dogma that crime must be fought by attacking its causes was replaced by the belief that existing programs based on such provisional identifications did more harm than good. Scepticism about the significance of what used to be referred to as the "causes of crime," and the shift of attention to the possibly criminogenic function of crime control activities was first expressed by Frank Tannenbaum (1938), later elaborated by Edwin M. Lemert (1951), and grew into a full-fledged school of thought commonly identified as "labeling theory." Thus, the idea that misguided government agencies entrusted with crime control contributed to criminality did not originate in Republican campaign rhetoric. It was Republican politics, however, rather than "labeling theory," that effectively demolished the house built around attempts to locate and dissipate "criminogenic factors."

Of course liberals and conservatives made different inferences from these similar insights. Where liberals saw the need for a reduction of official intervention by decriminalization and diversion, conservatives argued for creating an effective barrier between the community of law abiding citizens and the torrent of depredation that threatened to engulf it. In both cases, however, state action at the highest level was indicated: the liberals moving to provide incentives through government for government at lower levels to decriminalize and divert; the conservatives support for increased but more cost-effective crime control, primarily through the police.

In terms of popular sensibilities, the conservative definition of the meaning of crime carries the day; in our day the initiative has shifted to the side of crime control activism. In self-declared sober minds it takes the shape of views commending the resolute use of penal sanctions in a way likely to contribute maximally to the reduction of crime rates. And as a theme of political ideology the meaning of crime acquires a penumbra of connotations expressed in the form of analogies to the "decline and fall of the Roman Empire." When this attitude gains wide currency, talk of crime and dealings with it can no longer be freed of a sense of great urgency and of national importance: burglars become national enemies and their victims become witnesses to a higher cause. Such beliefs give rise to a rhetoric with an independent momentum that subsists and retains viability even when dissociated from reality. Thus the people, politicians, and media continue talking about "rising crime rates," quite unperturbed by the fact that these rates have recently been declining, even according to the F.B.I., which has never been accused of sympathies for the liberal cause. Talking about crime realistically becomes somehow subversive of the struggle against it; pointing to declining rates is perceived as raising captious and frivolous objections to a task of critical importance for the survival of the nation.

The zeal of condemnation of crime and the frantic urgency it evokes is only one part of the "crime issue" at the national level. Not only have we mobilized for a war against crime, but we have taken this war into areas involving matters other than criminality in the traditional sense. While the law enforcement institutions of the country were confronted with rapidly rising crime rates in the second half of the 1960s, they nevertheless accepted, eagerly it would seem, the added responsibility of controlling political protest related to the civil rights struggle and the war in Vietnam. The principal response of government to these activities was to brand them with the stamp of lawlessness and criminality. The justification was that while the right to orderly dissent was intact and remained available, persons who breached the norms regulating its expression forfeited the right to present their case for a fair hearing. Indeed, according to this view, the choice of methods deliberately or incidentally disrupting the convenience and decorum of urban life disqualified the dissenters from participation in the democratic process. Accordingly, government attention was directed not to the substance of the dissent, but to those external aspects of the dissenters' conduct that seemed to involve law-breaking in the ordinary sense. The choice to criminalize parts of political life, the attempt to dispose of opponents by defining them as merely peace-breakers, enriched the struggle against crime of the ordinary sort. The defense of "law and order" almost reached a siege state, clearly demanding measures of extreme condemnation and control.

We are quite prepared to admit that the criminalization of politics, like the politicization of crime, is not unprecedented in American life. What appears to be relatively new is that the "law and order" campaign against political dissidents was carried out with sustained vigor, and on a broad scale, despite the fact that many of the dissidents came from the upper-middle and upper strata of society.

There is an irony difficult to miss in the fact that the most outspoken advocates of using penal law against political opponents became themselves victims of this method of political struggle. Despite many differences, the trial of the Chicago Eight, the persecution of the Black Panthers, the mass arrests of war protesters, on the one hand, and the legal proceedings arising out of the Watergate Scandal including the impeachment hearings, on the other, spring from the same impulse.

In sum, the politicization of crime and the criminalization of politics are two critically important aspects in the meaning of crime in our times. Americans seem to perceive a far greater necessity for, and possibly have greater faith in the effectiveness of, the criminal justice process in the broadest sense, as a preferred method of social control, than in the years past. If one is to believe the polls, Americans have made the control of crime the first item on the agenda of the internal functions of government, and opinions concerning the relative importance of this task have become an important crystalization point for political partisanship. Further, Americans have seemingly accepted the desirability and feasibility of attacking political opponents by focusing on those aspects of their activities that are, or can be interpreted to be, violations of penal law. For this to be effective one cannot rely on the spontaneous lawlessness of the opponent; thus, it should come as no surprise that recent revelations strongly suggest the use of agent-provocateurs and of other instigations of lawless aspects of protest in the 1960s.

III

The appointment of the President's Commission on Law Enforcement and Administration of Justice, and to a lesser extent the creation of the National Commission on Civil Disorders and the National Commission on the Causes and Prevention of Violence, indicate the conspicuous rise of crime in the broadened sense into the sphere of national politics. The "Crime Commission," as the first of the three came to be called, is of special interest because its work sought to combine the old and the new.

Though clearly aware of the heightened significance of crime in national life, the Commission intoned its recommendations with controlled alarm and measured optimism. We may have fallen behind somewhat in dealing with criminals effectively, it said, but we were basically on the right track, and could and would catch up if we got better organized and more adequately financed. This is the essence of the seven principles to which the Commission boiled down its many reports. One would look in vain through the volumes the Commission produced for the kind of sober scepticism and matter-of-fact practicality that permeates Norval Morris and Gordon Hawkins' (1970) advice to honest politicians on crime and crime control. While the latter work always deals with matters involving crime in ways that address simultaneously the prevailing social and political interests in these matters, the Commission's utterances betrayed supreme indifference for the consequences of the national anxiety about crime. Thus, the Commission's work was mainly the last statement of a past era, comprising the highest level of its scholarship and the most eloquent expression of its ideology. If this kind of scholarship and this ideology are not yet exhausted, they have lost the dominant position they once occupied. The reorientation of policy that set in with the beginning of the Nixon presidency was soon joined by a turn to scepticism and pessimism in criminological scholarship about the prospects of rehabilitative correction or the promise of crime preventive service programs. The Commission's recommendations along these lines were, therefore, just an echo of the past, rather than an indication for the future.

IV

Like the rest of President Lyndon B. Johnson's quest for the Great Society, the work of the Crime Commission produced the typical outcome of harried liberalism—a federal agency. The Omnibus Crime Control and Safe Streets Act of 1968 established an agency whose very name echoes the New Deal—the Law Enforcement Assistance Administration (LEAA). Ten years later the agency has fallen into disfavor and legislative action has been initiated to replace it with a new governmental structure. It is fair to say that the 6 billion dollars the agency has infused into the struggle against crime have not been the best husbanded expenditure of modern government. And it is no doubt true that "a complex bureaucratic structure has enveloped the Federal effort, involving state and local law enforcement officials in excessive regulation, complexity and mountains of red tape—rather than providing them with needed financial and technical assistance," as President Carter stated in his message to the Congress. Still, there is little doubt that the LEAA will have made a significant and long lasting impact on American criminal justice administration, however inefficient and misguided some, many, or perhaps all its activities will be judged to have been.

That the LEAA and its arm, the National Institute of Law Enforcement and Criminal Justice, have been influential seems certain. Where its intended impact can be defined precisely, however, there is often a good deal of uncertainty that the changes introduced really took hold in the planned sense. For example, it is quite unclear what the effects of changes in urban police patrol practices really mean for the quality of policing. But there are few who would not agree that a new aspect has been added to what is going on in police departments, prosecutors' offices, and courtrooms. If this new aspect cannot easily be characterized, it is clearly due to the presence of the LEAA.

The LEAA provided impetus for a movement in the direction of synthesis and uniformity in American criminal justice. Its direct efforts to move along such lines may have been less effective than certain byproducts of the agency's activities. Wherever the agency brought local authorities into relationships with itself, it imposed upon them a degree of uniformity and pressed them to conform to certain universal standards. It initiated "requests for proposals," spelling out in detail the kinds of efforts deemed worthy of its support in the war against crime, as well as the forms that responses had to take. More diffuse but more important, as there developed a structure and lore around dealings with LEAA, local authorities found themselves trotting common paths. Even though the similarity of the paths was determined mainly by the circumstances of addressing federal largess, it resulted in a closer integration of parts of national law enforcement which in the past scarcely knew of each other's existence. All this was augmented by institutes, conferences, meetings, and the dissemination of information about research and development which contributed to bringing formerly autonomous elements together and creating a sense of community among them.

Relations with LEAA also inevitably forced local authorities to a higher level of bureaucratic formalism. Outside sponsored and financed activities called for more deliberate planning and more careful assessment of practices than was ordinary in American criminal justice administration. Police departments, court houses, and correctional institutions acquired advanced elements of public administration. With them came electronic technology and the technicians to run them. Last but certainly not least came a progressively more open and willing acceptance of research, experimentation, and innovation.

It is possible, of course, that the air of modernizing would have swept into the Halls of Justice without the LEAA. However, the vastly preponderant majority of these changes were introduced under LEAA aegis and scrutiny, and paid for with LEAA money. One is justly sceptical whether all those bright young women and men with degrees in political science or sociology would have had an opportunity to try to solve the eternal puzzles of justice with computers had it not been for LEAA. And one finds it very difficult to believe that